

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAETANO D'ATTORE,

Plaintiff,

-against-

THE STATE OF NEW YORK, et. al.,

Defendants.

10 CIV 1315 (RWS)

USDC SDNY
DOCUMENT
NOTICE OF ELECTRONICALLY FILED

DOC#:

DATE FILED: 3/13/12

PLEASE TAKE NOTICE that upon the annexed affirmation of Gaetano D'Atto, affirmed on March 7, 2012, and upon the exhibits attached thereto, the Courts February 8, 2012 order, Exhibit-A, and the Courts February 27, 2012 order, Exhibit-B, in support of this motion and the pleadings herein, plaintiff will move this Court, before ROBERT W. SWEET, United States District Judge, for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure granting plaintiff a Dismissal of Complaint by a decision in favor of a Withdrawn without/pending no prejudice.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Franklin, New York
March 7, 2012.

Gaetano D'Atto
UPSTATE CORRECTIONAL FACILITY
P.O. BOX 2001
Malone, N.Y. 12953

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GAETANO D'ATTORE,

Plaintiff,

10 Civ. 1315 (RWS)

- against -

THE STATE OF NEW YORK, et al.,

AFFIRMATION IN
SUPPORT OF MOTION

Defendants.

I, Gaetano D'Atto, affirm under penalty of perjury that:

1. I, Gaetano D'Atto, am the plaintiff in the above entitled action, and respectfully move this Court to issue an order Dismissing the Complaint and/or to grant plaintiff a WITHDRAWN PENDING NO PREJUDICE decision/order.

2. The reason why I am entitled to the relief I seek is the following pursuant to the 14th Amendment of the United States Constitution, the right to have Due Process of Law, and it is plaintiff's right to request a dismissal of a complaint/grievance pending no prejudice. As well as due to the fact that this Court has calendared two different dates to hear defendant's motion and letter being treated as a motion. This is believed to be not only unusual but, seems to show prejudice and the Court to be bias. Plaintiff wishes for the Court to grant plaintiff's motion in its entirety without prejudice.

WHEREFORE, I respectfully request that the Court grant this motion, as well as such other and further relief as may be just and proper. I declare under penalty of perjury that the foregoing is true and correct.
Dated: Franklin, New York
March 7, 2012

Gaetano D'Atto
Upstate Correctional Facility
P.O. Box 2001
Malone, NY 12953

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

GAETANO D'ATTORE

Plaintiff,

10 CIV. 1315 (RWS)

-against-

AFFIRMATION OF SERVICE

THE STATE OF NEW YORK, et. al.,

Defendants.

x

I, Gaetano D'Atto, declare under penalty of perjury that I have served a copy and original of the attached NOTICE OF MOTION TO DISMISS (WITHDRAW THE COMPLAINT PENDING NO PREJUDICE upon MICHAEL A. CARDOZO, Esq. CORPORATION COUNSEL/LAW DEPARTMENT, 100- CHURCH STREET, NEW YORK, N.Y. 10007 and upon Justice, ROBERT W. SWEET, UNITED STATES DISTRICT COURT/SOUTHERN DISTRICT OF NEW YORK, 500-Pearl Street, Rm 230 NEW YORK, N.Y. 10007, by United States Postal Regular Mail,

Dated: Franklin, New York
March 7, 2012

Gaetano D'Atto
UPSTATE CORRECTIONAL FACILITY
P.O. BOX 2001
Malone, N.Y. 12953

EXHIBIT-A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

GAETANO D'ATTORE,

10 Civ. 1315

Plaintiff,

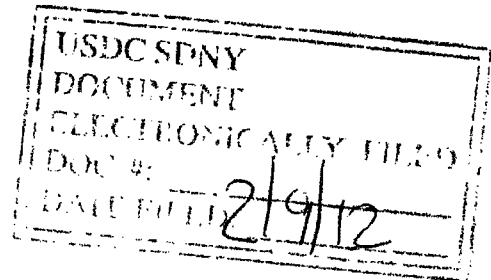
ORDER

-against-

THE STATE OF NEW YORK, ET AL.,

Defendants.

-----X



Sweet, D.J.

The Defendants' motion to dismiss will be heard on submission on March 28, 2012. All motion papers shall be served in accordance with Local Civil Rule 6.1.

It is so ordered.

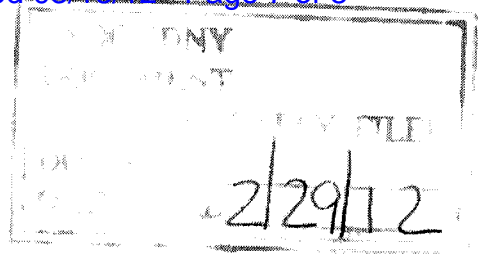
New York, NY
February 8, 2012

A handwritten signature in cursive script, reading "Sweet".

ROBERT W. SWEET
U.S.D.J.

EXHIBIT-B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
GAETANO D'ATTORE,

10 Civ. 1315

Plaintiff,

ORDER

-against-

THE STATE OF NEW YORK, ET AL.,


Defendants.
-----X

Sweet, D.J.

The Defendants' letter dated February 17 will be
treated as a motion and heard on submission on March 14, 2012.

It is so ordered.

New York, NY
February 27, 2012



ROBERT W. SWEET
U.S.D.J.

Gaetano D'Atto, DIN NO. 104 5728
Upstate Correctional Facility
P.O. Box 2001
Malone, N.Y. 12953

March 7, 2012

RE: 10 CIV. 1315 (RWS)

TO: CLERK OF THE COURT

USDC(SDNY-

500-Pearl Street, Rm. 230

New York, N.Y. 10007

Dear Sir/Ma'am,

Please take notice that I, Gaetano D'Atto, plaintiff in the above entitled action, am indigent, incarcerated and in the status, and request for this Court to extend its service's to make copies of the Exhibits and all motion papers to be forwarded to the defendant's counsels, Michael Cardozo, Esq. Corporation Counsel and to the Attorney General's office, Eric T. Schneiderman, 120 Broadway, New York, N.Y. 10271. Please be informed that only the exhibit(s) A & B need to be forwarded to Corporation Counsel, Michael A. Cardozo, Esq., as his firm is in possession of all other documents. I thank you for your consideration in this regard.

I, declare under penalty of perjury that the foregoing is true and correct.

Respectfully Submitted,

Gaetano D'Atto

Dated: Franklin, New York
March 7, 2012

GAETANO D'ATTORE, Pro-Se

UPSTATE CORRECTIONAL FACILITY

cc: MICHAEL A. CARDOZO, ESQ. PRO SE OFFICE P.O. BOX 2001

CORPORATION COUNSEL (LAW DEPT)

Malone N.Y. 12953

100- Church Street, New York, N.Y. 10007